



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0993]

RIN 1625-AA00

Safety Zones within the Captain of the Port New Orleans Zone,
Louisiana

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones for two fireworks display events within the Captain of the Port (COTP) New Orleans Zone. This action is necessary to protect persons and vessels from potential safety hazards associated with these events. Entry into these zones is prohibited unless specifically authorized by the Captain of the Port New Orleans or a designated representative

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until January 1, 2015. For the purposes of enforcement, actual notice will be used from December 6, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

This rule will be enforced from 9:00 p.m. to 9:30 p.m. on

December 6, 2014 and from 11:45 p.m. on New Year's Eve, December 31, 2014 to 12:30 a.m. on January 1, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0993]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Commander (LCDR) James Gatz, Sector New Orleans, at (504) 365-2281 or James.C.Gatz@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
LMR	Lower Mississippi River
MM	Mile Marker
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

There are two separate marine events addressed by this temporary regulation. 1) The Plaquemines Parish Fair & Orange Festival is an annually occurring event, but the sponsor did not apply for a marine event permit for the prior year's event and the event appears to have no regulatory history. 2) The Madisonville New Year's Eve event is also an annually occurring event, but the sponsor did not apply for a marine event permit for the prior year's event, and the event appears to have no regulatory history. Upon full review of the details of each of each of these events, the Coast Guard determined that additional safety measures are necessary.

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because as scheduled, the displays would take place before the full NPRM process could be completed. Because of the dangers presented by aerial barge based fireworks

displays taking place on and over the waterway, it is in the public's interest for the Coast Guard to establish these safety zones to protect persons and property during the displays. These displays have also been advertised to and planned on by the local community. Delaying this rule to complete the full NPRM process would also be impracticable as it would unnecessarily interfere with possible contractual obligations. While it is in the public's best interest to provide this safety measure, the impacts on navigation are expected to be minimal as the safety zones will only be enforced for short durations. The Coast Guard will notify the public and maritime community that the safety zones will be in effect and of their enforcement periods via broadcast notices to mariners (BNM).

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Providing a full 30 days notice is contrary to the public interest as it would delay the effectiveness of the safety zones until after the planned fireworks events. Immediate action is needed to protect vessels and mariners from the safety hazards associated with aerial fireworks displays over waterways.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703, 50 U.S.C. 191.

195; 33 CFR 1.05-1; 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

The Coast Guard has determined that this temporary rule is necessary to promote the safety of life on navigable waterways within the COTP New Orleans Zone during these events. 1) The safety fallout area for the Plaquemines Parish Orange Festival fireworks will extend 300 feet into the Lower Mississippi River from a point between MM 19.5 and MM 20.5 above Head of Passes (AHP). The Lower Mississippi River is approximately 2600 feet wide at this location. There is room for vessels to pass by the safety fallout zone, however, the possibility of malfunction resulting in a firework being launched horizontally poses a risk to the chemical and oil tankers which frequently transit the river. 2) The safety fallout area for the Madisonville New Years Eve fireworks will extend 500 feet in all directions from the center of the Tchefuncta River, one-half mile north of the confluence of the Tchefuncta River and Lake Pontchartrain. The Tchefuncta River is approximately 1050 feet wide at this location, which leaves no room for any vessel to safely pass the fireworks barge.

C. Discussion of the Final Rule

This temporary rule establishes two safety zones for two fireworks displays. This rule will be enforced during two separate dates occurring between December 6, 2014 and January 1, 2015.

The events covered by this regulation will be enforced on the respective dates and times listed in the table below.

Item Number	Name of Event	Date, Time and Location
1	Plaquemines Parish Fair and Orange Festival	Date: December 6, 2014, from 9:00 p.m. to 9:30 p.m. Location: The entire width of the Lower Mississippi River between MM 19.5 and MM 20.5 above Head of Passes.
2	Madisonville New Year's Eve Celebration	Date: New Year's Eve, December 31, 2014 from 11:45 p.m. until 12:30 a.m. on January 1, 2015. Location: The entire width of the Tchefuncta River beginning at the confluence of the Tchefuncta River and

		Lake Pontchartrain and extending one mile north.
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Entry into, anchoring in, or remaining in each of these zones during the times stated is prohibited unless permission has been granted by the COTP New Orleans, or a designated representative.

The COTP New Orleans will inform the public through broadcast noticed to mariners of the enforcement periods for the safety zones as well as any changes in the planned schedules. Mariners and other members of the public may also contact Coast Guard Sector New Orleans Command Center to inquire about the status of the safety zones, at (504) 365-2200.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order

13563. The Office of Management and Budget has not reviewed it under those Orders. These safety zones will restrict navigation on the following dates and locations: thirty minutes on December 6, 2014 between MM 19.5 and 20.5 above Head of Passes on the Lower Mississippi River; and forty-five minutes on New Year's Eve, December 31, 2014 - January 1, 2015 from the confluence of the Tchefuncta River and Lake Pontchartrain and extending one mile north. Due to the limited scope and short duration of the safety zones, the impacts on routine navigation are expected to be minimal.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Lower Mississippi River from MM 19.5 to MM 20.5 AHP between 9:00 p.m. and 9:30 p.m.

on December 6, 2014; and the Tchefuncta River from MM 0.0 to MM 1.0 between 11:45 p.m. New Year's Eve, December 31, 2014 and 12:30 a.m. on January 1, 2015. This rule will not have a significant economic impact on a substantial number of small entities because it is limited in scope and will only be enforced for one hour or less on two separate dates. Before enforcement, COTP New Orleans will issue maritime advisories widely available to users of the river and will make notifications to the public through marine band radio when each safety zone is being enforced. Additionally, deviation from this rule may be requested and will be considered on a case by case basis by COTP New Orleans or a COTP New Orleans designated representative.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and

does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually

or cumulatively have a significant effect on the human environment. This rule involves establishing one temporary safety zone on the Lower Mississippi River and one temporary safety zone on the Tchefuncta River. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04.6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08-0993 is added to read as

follows:

§ 165.T08-0993 Safety Zones, New Orleans Captain of the Port Zone, LA.

(a) Location. The following areas are safety zones:

(1) All waters of the Lower Mississippi River from mile marker 19.5 to mile marker 20.5 above Head of Passes, Fort Jackson, LA.

(2) All waters of the Tchefuncta River from the confluence of the Tchefuncta River and Lake Pontchartrain, extending one mile north into the Tchefuncta River, Madisonville, LA.

(b) Effective dates and enforcement periods. This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until January 1, 2015. For the purposes of enforcement, actual notice will be used from December 6, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The safety zones will be enforced during the following times:

(1) December 6, 2014, from 9:00 p.m. until 9:30 p.m., at Fort Jackson, LA.

(2) New Year's Eve, December 31, 2014 at 11:30 p.m. until January 1, 2015 at 12:30 a.m., at Madisonville, LA.

(c) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into these zones is prohibited unless specifically authorized by the Captain of the Port (COTP) New Orleans or designated personnel. Designated personnel include commissioned, warrant and petty officers of the U.S.

Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

(2) Persons and vessels requiring deviation from this rule must request permission from the COTP New Orleans or a COTP New Orleans designated representative. They may be contacted on VHF-FM Channel 16 or 67, or through Coast Guard Sector New Orleans at 504-365-2200.

(3) Persons and vessels permitted to deviate from this rule must transit at the slowest safe speed and comply with all lawful directions issued by the COTP New Orleans or designated representative.

(d) Information broadcasts. The COTP New Orleans or a COTP New Orleans designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zones as well as any changes in the planned schedule.

Dated: December 3, 2014

Philip C. Schiffflin,
CAPTAIN, U.S. Coast Guard,
Captain of the Port New Orleans

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Date: 12/23/2014]